



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 8, 2005

**MEMORANDUM**

**To:** Lawrence H. Norton  
General Counsel

**AUDIT REFERRAL # 05-05**

**Through:** James A. Pehrkon  
Staff Director

Robert J. Costa  
Deputy Staff Director

**From:** Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Martin L. Favin  
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COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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**Subject:** Joe Turnham for Congress (A03-05)-Referral Matters

On August 4, 2005, the Commission approved the final audit report on Joe Turnham for Congress (TFC). Legal analyses were prepared by your office for both the interim and final audit reports. The final audit report includes the following matters that are referable:

- Finding 1 – Receipt of Contributions that Exceed the Limits meets the criteria for referral to your office. TFC refunded \$13,000 of excessive contributions to individuals. TFC believes the remainder is not excessive because it represents gifts given from the Candidate's father.
- Finding 2 – Receipt of Unsecured Bank Loans meets the criteria for referral to your office. The Audit staff was unable to determine if the loans met the criteria for assurance of repayment based on the totality of the situation because the bank did not provide their underwriting standards policy. This information was requested through a subpoena in January 2004. To date this information has still not been provided by the bank.

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Erica Lee or Martin Favin at 694-1200.

**Attachments:** Finding 1 – Receipt of Contributions that Exceed the Limits  
Finding 2 – Receipt of Unsecured Bank Loans  
Legal Analyses Prepared by the Office of General Counsel

## **Finding 1. Receipt of Contributions that Exceed Limits**

### **Summary**

The Audit staff identified contributions from individuals that appear to exceed the contribution limits by \$175,502, although not all outstanding at once. These consisted of contributions made in connection with loans TFC received from BancorpSouth, loans reported as being from the Candidate, loans collateralized by an individual and contributions made by individuals. In response to the interim audit report, TFC refunded \$13,000 of excessive contributions to individuals. TFC believes the remainder is not excessive because it represents gifts given from the Candidate's father.

### **Legal Standard**

**Authorized Committee Limits.** An authorized committee may not receive more than a total of \$1,000 per election from any one contributor. 2 U.S.C. §§441a(a)(1)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a)

**Receipt of Excessive Contributions.** No officer or employee of a political committee may accept a contribution for the benefit of a candidate or make an expenditure on behalf of a candidate that violates any limitation of this part. 11 CFR §110.9(a)

**Contribution.** The term contribution includes any loans (excluding a bank loan), a guarantee, endorsement, and any other form of security. A loan which exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR §110 shall be unlawful whether or not it is repaid. 11 CFR §100.7(a)(1)(i)(A)

**Expenditures by Candidates.** Candidates for Federal office may make unlimited expenditures from personal funds. 11 CFR §110.10(a)

**Definition of Personal Funds.** Personal funds of the candidate include the following:

1. Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:
  - a. Legal and rightful title, or
  - b. An equitable interest
2. Salary and other earned income from bona fide employment, dividends and proceeds from the sale of the candidate's stock or other investments, and gifts of a personal nature which had been customarily received prior to candidacy. 11 CFR §110.10(b)(1) and (2)

**Revised Regulations Applied.** The Commission recently adopted new regulations that allow committees greater latitude to designate contributions to different elections and to reattribute contributions to joint account holders and has decided to apply these regulations to current matters. The Audit staff has evaluated the excessive contributions discussed below using the new regulations.

## Facts and Analysis

### I. Excessive Contributions of Money Made by the Candidate's Father

The Candidate's father, Pete Turnham, who was also TFC's Treasurer, contributed \$6,000 to TFC. These contributions exceeded the limitations by \$4,000. Notations on the contribution checks attributed \$3,000 each to him and Kay Turnham, (\$1,000 each for the primary, runoff, and general elections). Kay Turnham was not listed as an account holder on the checks, there was no signed reattribution of any of the contributions to Kay Turnham, and there was no runoff election.

In addition to the excessive contributions noted above, TFC reported the receipt of loans from the Candidate's personal funds totaling \$80,500. Of this amount, \$72,000 originated from Pete Turnham:

- \$42,000, 1/31/2002 - A check from Pete Turnham was deposited into one of the Candidate's personal accounts on January 31, 2002. The memo line of the check noted that it was a loan. On the same day, the Candidate wrote a \$42,000 check to TFC from this account. The balance in the account prior to the deposit of the Pete Turnham check was \$3,138.
- \$30,000, 4/11/2002 - A check from Pete Turnham was deposited into one of the Candidate's personal accounts on April 11, 2002. On the same day, TFC received \$30,000 from this account.<sup>1</sup> Other than one \$700 deposit and a minor amount of interest there were no other deposits into this account in 2002. This account maintained a monthly balance of less than \$50.

Payments on these loans were made to the Candidate throughout 2002. The entire amount was paid to the Candidate by November 19, 2002. The largest amount outstanding on the loan was \$48,500 on April 11, 2002. To date, only \$30,000 was returned to Pete Turnham. See Attachment A.

### II. Excessive Contributions Made in Connection with Loan Repayments

During 2002 TFC received the following loans, totaling \$98,023, from BancorpSouth in Auburn, Alabama (See Finding 2):

- Loan A for \$20,075 on May 28, 2002 with a maturity date of August 26, 2002.
- Loan B for \$17,075 on June 17, 2002 with a maturity date of September 15, 2002.

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<sup>1</sup> Both checks were dated March 30, 2002 and the Candidate loan was reported on disclosure reports on March 31, 2002. The balance in this bank account on March 25, 2002 was \$46.

- Loan C for \$60,873 on October 15, 2002 with a maturity date of January 13, 2003.

Loans A and B were repaid to BancorpSouth with the following funds:

- A payment of \$4,000 (from a \$6,000<sup>2</sup> check to BancorpSouth) written on one of the Candidate's personal account on September 23, 2002. On the same day, a check for \$10,000 was drawn by the Candidate on the Turnham Irrevocable Trust (Trust Fund). This Trust Fund check was deposited to the Candidate's personal account on September 24, 2002. TFC failed to report the receipt of the \$4,000, as well as the \$4,000 payment to the bank on its disclosure reports. The beneficiary of the Trust Fund is RuthMary Kay Turnham, the Candidate's sister. The Candidate is the Trustee and his parents are the Grantors. TFC suggested that the \$10,000 payment from the Trust Fund may be a fee paid to the Candidate for his services as a Trustee. The Audit staff requested tax documents to show that these funds were treated as income by the Candidate. To date, no such documentation has been supplied. Absent production of the requested records, the \$4,000 paid to BancorpSouth is considered to be an excessive contribution by the Trust Fund.
- Proceeds of \$34,098 from Loan C on October 15, 2002.

Loan C was repaid to BancorpSouth with the following funds:

- On February 4, 2003 the Candidate obtained a \$247,000<sup>3</sup> personal loan from Auburn Bank that was secured by Pete Turnham's real estate, Pete Turnham's shares of Auburn Bank stock, and an assignment of the proceeds of the Candidate's term life insurance policy (Auburn Loan). From the proceeds of this loan, \$62,502 was used to repay Loan C on February 5, 2003. The payment of the loan was incorrectly reported as an in-kind contribution from the Candidate.

In addition to funds being used to repay Loan C from the Auburn Loan, proceeds were used to make a new "Candidate" loan to TFC in the amount of \$28,000. This loan is reported by TFC on February 4, 2003 and represents an additional contribution by Pete Turnham.

The total amount of the Auburn Loan used for TFC obligations was \$90,502 (\$62,502 + \$28,000).

### III. Excessive Contributions from Individuals Made Directly to TFC

The review of TFC's receipt records identified five contributions from four individuals that appeared to exceed the contribution limits by \$5,000. Each contributor had given the maximum amount for both the Primary and General

<sup>2</sup> The remaining \$2,000 was a partial repayment on a Friends of Joe Turnham (1998 Committee) loan

<sup>3</sup> Proceeds of \$14,514 from this loan were used to pay off the 1998 Committee loan owed to BancorpSouth.

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elections. The excessive portion of each contribution was attributed to another individual. In each instance the only name imprinted on the check was the name of the individual who signed it and TFC did not obtain the signature of the other persons.

#### IV. Summary of Excessive Contributions

##### Excessive Amount Received

• Total Amount Contributed By Pete Turnham	\$166,502
• Turnham Irrevocable Trust Fund	4,000
• Excessive Contributions from Individuals	<u>5,000</u>
<b>Total Amount of Excessive Contributions</b>	<b>\$175,502</b>

##### Excessive Amount Attributable to Pete Turnham

• Contribution Checks	\$ 4,000
• Loan on 1/31/02	42,000
• Loan on 4/11/02	<u>30,000</u>
Subtotal of Money Given to TFC	\$ 76,000
• Collateral for Auburn Loan	<u>90,502</u>
<b>Total Amount Contributed by Pete Turnham</b>	<b>\$166,502</b>

##### Excessive Amount Repaid & Outstanding to Pete Turnham

• Total Amount of Money Given to TFC	\$ 76,000
• Amount Repaid from Candidate's personal account for 4/11/02 Loan	<u>(\$ 30,000)</u>
<b>Total Amount Outstanding to Pete Turnham</b>	<b>\$ 46,000</b>

The Audit staff provided TFC representatives with a schedule of the excessive contributions, as well as, a list of items that were not provided during fieldwork with respect to the source of the loans made by the Candidate. TFC supplied some of the information. The remaining information was obtained through a subpoena.

#### **Interim Audit Report Recommendation**

The Audit staff recommended that TFC:

- Provide evidence demonstrating that the contributions in question were not excessive, including the collateral provided by Pete Turnham totaling \$90,502. If amounts received from Pete Turnham were "gifts of a personal nature which had been customarily received prior to candidacy," evidence of previous gifts of a similar nature should have been provided.
- Demonstrate that a portion of the \$4,000 received from the Trust Fund was permissible because the beneficiary intended to make a contribution to TFC. Documentation should have included a prior written consent or a signed statement from the beneficiary concerning her intent. Alternatively, if this payment represents a fee for services provided to the Trust Fund then supporting documentation should

have been submitted. Documentation should have included tax records demonstrating the payment was claimed as income, as well as evidence of any past compensation from the Trust Fund.

- Demonstrate why the excessive contributions made by Pete Turnham were not made and received knowingly and willfully given that he was Treasurer of TFC and the source of most of the excessive contributions.
- Absent such evidence:
  1. Refund \$46,000 to Pete Turnham and provide evidence of such refunds (copies of the front and back of the negotiated refund checks) or demonstrate that the Candidate has returned the remaining \$42,000 to Pete Turnham;
  2. Refund \$4,000 to the Turnham Irrevocable Trust Fund and provide evidence of such refunds (copies of the front and back of the negotiated refund checks); and
  3. Refund \$5,000 to the individuals and provide evidence of such refunds (copies of the front and back of the negotiated refund checks).
- Amend disclosure reports to show:
  1. Pete Turnham as the source of the loans totaling \$72,000 (\$42,000 + \$30,000) reported as loans from the Candidate.
  2. The outstanding balance of \$42,000 owed to Pete Turnham on Schedule D (Debts and Obligations).
  3. The receipt of loans from Auburn Bank in the amount of \$90,502 on Schedules A (Itemized Receipts), C (Loan Information) and C-1 (Loans and Lines of Credit from Lending Institutions). The collateral for the loans must be reported as real estate and stock belonging to Pete Turnham, as well as the assignment of the Candidate's life insurance. Amended reports should not include the \$28,000 currently disclosed as a loan from the Candidate because it is included in the \$90,502 noted above.
  4. A loan repayment to BancorpSouth in the amount of \$62,502 (all of the entries that are on the current disclosure reports with respect to this loan repayment should be removed).
  5. The receipt of \$4,000 from the Turnham Irrevocable Trust Fund, as well as payments to BancorpSouth.
  6. The repayment of the Auburn Bank Loan totaling \$90,502. Payments on this loan must be continuously reported until \$90,502 in principle has been repaid to the bank. These payments may take the form of one or a combination of the following:
    - a. Payments made by the Candidate and disclosed as in-kind contributions on Schedules A and B; or
    - b. Payments made by TFC to Auburn Bank and disclosed as loan repayments.
- If funds were not available to make the necessary refunds, disclose the refunds due on Schedule D (Debts and Obligations) until funds became available to make the refunds.

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## Committee Response to Recommendation and Audit Staff's Assessment

In response to the recommendation:

1. \$4,000 was refunded from the Candidate's personal bank account to the Turnham Irrevocable Trust Fund. A front copy (front only) of the check dated October 19, 2004 was supplied.
2. \$5,000 was refunded from the Candidate's personal bank account to the four individuals noted above. Front copies of the checks dated October 19, 2004 were supplied.
3. \$4,000 was refunded from the Candidate's personal bank account to Pete Turnham. A front copy of the check dated October 19, 2004 was supplied.
4. Loan for \$42,000, 1/31/2002
  - A. Counsel refers to Advisory Opinion (AO) 1988-7, which he states the "Commission determined that monetary gifts received by a candidate from his parents in the three years preceding his candidacy for Federal office indicated a 'repetitious custom of monetary gifts' without regard to their son's candidacy." Counsel believes the funds<sup>4</sup> (\$7,000 in 1997; \$18,628 worth of Pete Turnham's stock in 1998; \$18,500 in 1999; \$3,500 in 2000 and \$10,500 in 2001) given by Pete Turnham to Joe Turnham "...in the four years preceeding the 2001-02 election cycle, show a "repetitious custom of monetary gifts" and should be viewed as the Candidate's personal funds. Counsel fails to note that the Commission stated it was because of the fact that the "AO candidate" running for Federal office in 1988 did not run for Federal office in 1984 or 1986, that the gifts he received from 1985 through 1987 appear to be of a personal nature, rather than made in anticipation of or related to any campaign for Federal office. This is not the case for Joe Turnham. Joe Turnham ran for office in the 1997-1998 election cycle, the same time TFC Counsel states the Candidate began receiving funds from Pete Turnham. The Audit staff informed Counsel prior to the interim audit report that in order to show a pattern of gifts, documentation of money from Pete Turnham would need to date prior to the Candidate's 1997-1998 campaign. To date no such documentation has been supplied. Furthermore, these amounts are significantly lower than the \$72,000 loaned in 2002 and the only documentation supporting these amounts is deposit slips with "Turnham" on the description line next to the amount. It could not be determined whether these deposit slips reflect funds from Pete Turnham or transfers from one of the Candidate's other bank accounts.<sup>5</sup> Copies of the checks from Pete

<sup>4</sup> These funds were not verified by the Audit Division.

<sup>5</sup> Joe Turnham's personal bank statements supplied during fieldwork showed transfers of funds, via check, from one account to another.

Turnham were not supplied, nor was paperwork showing the transfer of stock to the Candidate from Pete Turnham.

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- B. Counsel also refers to Matter Under Review 5321 (MUR) in which he states a candidate received an \$800,000 gift from her mother during her candidacy for Congress in 2002 and that the mother had given substantial gifts to her daughter from 1996 through 2000. Furthermore, he states that the Office of General Counsel conducted an investigation, found the \$800,000 to be an excessive contribution and recommended that the Commission enter into a conciliation agreement. Counsel states that the Commission failed to adopt this recommendation. While Counsel is correct in stating that the Commission failed to adopt this recommendation, he does not acknowledge that the Commission voted 3-3 on this recommendation. Therefore, this MUR neither supports TFC's contention that the funds from Pete Turnham were gifts, nor does it dispute it.
  - C. Counsel states that Pete Turnham provided for another one of his children. He states Pete Turnham gave Ruthmary Turnham (the Candidate's sister) a residence and \$30,000 a year. Once again, documentation to substantiate this claim was not supplied. Bank statements given to the Audit Division during fieldwork showed a Trust Fund was setup for Ruthmary Turnham in 1996. From January 2002 through February 2003 deposits<sup>6</sup> were not made to this Trust Fund, the only activity in this account was the withdrawal the Candidate made to himself. (See Finding 1, Section II). Furthermore, Counsel does not mention whether Pete Turnham provided any funds to Tim Turnham or Diane McCrary, the Candidate's other siblings. Therefore, any sort of pattern showing the funds are consistent with giving gifts to all his children during the same years, and for the same amount, has not been documented by TFC.
  - D. Counsel provided a copy of Pete Turnham's Internal Revenue Service (IRS) Form 709 (United States Gift (and Generation -Skipping Transfer) Tax Return dated November 3, 2003 that itemized both this \$42,000 check and the \$30,000 check discussed below. However, according to Counsel the Candidate returned the \$30,000 gift to Pete Turnham prior to this November 2003 IRS Form.

In conclusion, TFC has not provided sufficient documentation to support their claim that the \$42,000 the Candidate received from Pete Turnham was a gift and not a loan, as the \$42,000 check itself stated on the memo line.

4. Loan for \$30,000, 4/11/2002-

Counsel states Pete Turnham gave the Candidate a gift of \$30,000 who then in turn made a loan to TFC on the same day. Furthermore he states, TFC repaid this loan four days later to the Candidate (he supports this statement by referring to Attachment A in the Interim Audit Report). Therefore, he believes that since the

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<sup>6</sup> The Audit Division only had bank statements for this time period.



\$30,000 remained outstanding for less than 30 days it should not be included per 11 C.F.R. 103.3(b)(3). However, the chart in Attachment A does not illustrate the \$30,000 being repaid to the Candidate four days later. Rather it shows a payment of \$30,000 being applied to the outstanding balance, which was \$48,500, and therefore part of the \$30,000 repayment was applied to the \$18,500 that was outstanding. Additionally, TFC's Schedules D show the \$30,000 loan outstanding through the July Quarterly 2003 report, over a year from the incurrence of the loan. Although, Joe Turnham repaid Pete Turnham fifteen days after this loan was made, \$42,000 was still outstanding to Pete Turnham from January 1, 2002, and therefore this repayment to Pete Turnham was applied to that loan since it had been outstanding for longer than 30 days.

Again, TFC has not provided sufficient documentation to support their claim that these funds represented a gift from Pete Turnham.

5. Auburn Loan for \$90,502-

- A. Counsel asserts that the collateral Pete Turnham provided for this loan is consistent with a past pattern of Pete Turnham personally guaranteeing other personal loans for the Candidate from the years 1993 through 2000. Adequate documentation to support this claim was not supplied. TFC supplied a list detailing only loan numbers, dates and amounts. Copies of loan agreements were only provided for two of the loans itemized on the list. Both loans were signed by the Candidate and his wife. Only one of these loans had a separate guaranty signed by Pete Turnham which stated the guaranty was not secured. Finally, these are loans that were guaranteed by Pete Turnham not collateralized by Pete Turnham's assets, as is the case for the Auburn Loan of \$90,502.
- B. TFC Counsel also states that because the majority<sup>7</sup> of the Auburn Loan was used for personal debts and the fact that it was obtained after the 2002 election, that this further supports that it was a gift from Pete Turnham. On the contrary, because the loan proceeds from the loan were used to pay off TFC debts and a TFC loan incurred prior to the 2002 election, the fact it was received in 2003 and used partly for personal debt is not relevant.
- C. TFC Counsel also states the Candidate was in a "Catch-22" because he was unable to earn income while running for Congress and therefore would have defaulted on his campaign and personal debt had Pete Turnham not co-signed the loan. TFC Counsel believes the Commission should not force individuals who are candidates for Congress to default on debts for fear of violating campaign finance laws and that the Commission has remedied this situation by allowing candidates to draw a salary from their campaigns. On a 2000 Personal Statement the Candidate's income is listed as between \$72,000 and 108,000; on a 2001 Personal Financial Statement supplied to Auburn Bank, the Candidate listed his total cash income as \$131,000 and on a 2002

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<sup>7</sup> Of the 247,000 Auburn Loan, the Audit staff noted \$90,502 was loaned to TFC (37%).

Commercial Loan Application the Candidate listed his income as \$91,000. Furthermore, a letter dated January 8, 2003 from the Candidate to Bancorp South stated the Candidate "has an established consulting income that has been constant since 1999. Income from that profession earned an average of approximately \$85,000-90,000 per year for each of the last 3 years." From the documentation supplied it appears the Candidate was able maintain a consistent salary throughout his run for Federal office.

- D. TFC filed a Schedule C-1 showing Auburn Bank as the source of the \$90,502, not signed by a bank official. TFC did not correctly disclose the source of the collateral. They failed to disclose Pete Turnham's real estate and his shares of Auburn Bank stock. They also failed to file a copy of the loan agreement.
- E. TFC filed Schedules B and C (2004 July Quarterly Report) showing \$21,605 had been paid to date on the Auburn Bank Loan. TFC supplied documentation showing that \$30,825 has been paid towards the principal of this loan. It appears that a new loan with the same collateral has been obtained to pay off the remainder of this loan. TFC did not file Schedules C and C-1 for this new loan.

Finally, Counsel stated that both Pete Turnham and Joe Turnham "...believe their actions during the campaign were entirely lawful and therefore, there was no "knowing and willful" violation of any federal campaign finance laws..." He stated that Pete Turnham was given the title of Treasurer as an honorary designation by the Candidate and played no formal role in the operation of the committee nor has Pete Turnham had any formal campaign finance training.

Pete Turnham has been the Treasurer of TFC since inception. He is also the Treasurer of Friends of Joe Turnham, the 1998 Committee and has been in that position since its inception (March 3, 1998). Additionally, on Pete Turnham personal checks to TFC, he redesignated and reattributed portions of the contributions exceeding the limits to other individuals and to other elections, including a runoff that did not take place. These designations and attributions demonstrate his knowledge of the contribution limitations.

## **Finding 2. Receipt of Unsecured Bank Loans**

### **Summary**

TFC obtained three unsecured bank loans, totaling \$98,023 that did not meet the regulatory "assurance of repayment" standard. The loans were guaranteed by the Candidate but not secured with any collateral owned by the Candidate or TFC. The

Audit staff requested a copy of the bank's policy with respect to issuing unsecured loans to political committees. BancorpSouth refused to comply with the subpoena request for [redacted]. In response to the interim audit report, TFC was unable to provide adequate documentation to demonstrate that the bank loans were made on a basis which assures repayment and made in the normal course of business.

## Legal Standard

**Loans Excluded from the Definition of Contribution.** The term "contribution" does not include a loan from a State or federal depository institution if such loan is made:

- in accordance with applicable banking laws and regulations;
- in the ordinary course of business;
- on a basis which assures repayment, as evidenced by a written instrument; and
- bearing the usual and customary interest rate of the lending institution. 2 U.S.C. §431(8)(A)(vii); 11 CFR §100.7(b)(11).

**Assurance of Repayment.** Commission regulations state a loan is considered made on a basis which assures repayment if the lending institution making the loan has:

1. Perfected a security interest in collateral owned by the candidate of political committee receiving the loan.
2. Obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts.
3. If these requirements are not met, the Commission will consider the totality of the circumstances on a case by case basis in determining whether the loan was made on a basis which assured repayment. 11 CFR §§100.7(b)(11) and 100.8(b)(12).

## Facts and Analysis

TFC obtained three loans from BancorpSouth (see Finding 1). According to documentation signed by the Vice President of BancorpSouth, the loans were

- "Unsecured"
- For the purpose of "Capital injection into business" and "Working Capital-Purchases Inventory & Carry Receivables"
- Guaranteed by Joseph R Turnham (*the Candidate*)
- Not collateralized by real estate, personal property, goods, negotiated instruments, certificates of deposit, chattel papers, stocks, accounts receivables, cash on deposit or similar traditional collateral, and future receipts.

Based on notations on information supplied by BancorpSouth, the Audit staff asked BancorpSouth representatives if any member of the Turnham family served in any capacity on the bank's Board and if they could provide a copy of their policy with respect to issuing unsecured loans. In response to a subpoena sent to the bank, they stated that Tim Turnham, the Candidate's brother, is a "local branch, non-decision, non-authority Advisory member." To date BancorpSouth has refused to provide a copy of its

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unsecured loan policy stating that the policy is "proprietary and internal to BancorpSouth."

The following table illustrates the loan amounts; the bank balances when the loans were received; the loan amount outstanding from the 1998 Committee; the maturity dates of each of the loans; and, the date each loan was repaid.

	Loan Amount	Loan Date and Bank Balance <sup>8</sup> Date	TFC Bank Balance	Loan Maturity Date	Date Loan Repaid
Loan A	\$20,075	5/28/02	\$7,250	8/26/02	10/15/02
Loan B	\$17,075	6/17/02	(\$10,502)	9/15/02	10/15/02
Loan C <sup>9</sup>	\$60,873	10/15/02	\$23,771	1/13/03	2/5/03
1998 Committee Loan	\$14,160	Continuously renewed	n/a	1/13/03	2/5/03

At the time TFC applied for Loan C from the bank, they had not repaid the first two loans, which were at least 30 days overdue. TFC used part of the proceeds from Loan C to repay Loans A and B. The 1998 Committee loan was still outstanding when all three TFC loans were obtained.

As demonstrated above, BancorpSouth loaned TFC three loans totaling \$98,023, with the greatest amount outstanding at one time being \$60,873. Given that none of the loans were collateralized, TFC did not demonstrate that it had met the requirements for assurance of repayment, or that the loans were made in the normal course of business.

At the exit conference, the Audit staff explained that the TFC loans were unsecured and requested a copy of BancorpSouth's loan policy with respect to issuing these types of loans to political committees. Representatives stated they would try to get this information from the bank.

### **Interim Audit Report Recommendation**

The Audit staff recommended that TFC demonstrate that these loans were made in the ordinary course of business and were made on a basis that assures repayment. Demonstration should have been documents obtained through BancorpSouth.

### **Committee Response to Recommendation and Audit Staff's Assessment**

<sup>8</sup> Bank Balance date is the balance at the close of business of the prior day noted in this column.

<sup>9</sup> A portion of the proceeds of this loan were used to pay off Loans A and B.

In response to the recommendation, TFC Counsel stated he believes the bank loans were made on a basis that assures repayment and in the ordinary course of business. He refers to the Matter Under Review 5198 (MUR 5198) which he states, the Commission determined that based on the totality of the circumstances, the bank in that case properly extended the loans to the candidate. He believes BancorpSouth demonstrated their efforts and compliance with Commission regulations in the same manner as the bank referred to in MUR 5198. In a letter to TFC Counsel, BancorpSouth states that "based on prior relationships with the Turnham family, the structure of the indebtedness, including the personal guaranty and depository accounts maintained with the bank, assured the bank the loans were be repaid in accordance of the stated terms and conditions." However, unlike the bank referred to in MUR 5198 Bancorp South did not provide a copy of their bank policy and underwriting standards. This information has been requested through a subpoena sent to Bancorp South in January 2004. Once this information has been obtained and reviewed, the Commission can determine if the aforementioned bank loans were made in the ordinary course of business and on a basis that assures repayment.

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Below is a chart detailing when loans/contributions were made to TFC, the amount of the loans/contributions, a running balance of the "excessive" amount per category (Contribution checks (*Section I*), Loans Made by Pete Turnham (*Section I*) and Collateral Provide by Pete Turnham (*Section II*)), amount repaid to the Candidate by TFC, Amount repaid to Pete Turnham either from TFC or from the Candidate's personal accounts.

Description	Bank Date	Amount	Running Outstand'g Balance	Amount Repaid to Joe Turnham	Amount Repaid to Pete Turnham
Contribution Check	1/21/02	4,000	4,000	-----	0
Outstanding Balance @ 3/30/04					
			4,000	-----	0
Funds Rec'd from Pete Turnham Rpt'd as Candidate Loan	1/31/02	42,000	42,000	-----	
TFC Loan Repayment	2/15/02	(4,000)	38,000	4,000	
TFC Loan Repayment	2/28/02	(19,500)	18,500	19,500	
Funds Rec'd from Pete Turnham Rpt'd as Candidate Loan	4/11/02	30,000	48,500	-----	
TFC Loan Repayment	4/15/02	(31,500)	17,000	31,500	30,000
TFC Loan Repayment	4/25/02	(1,500)	15,500	1,500	
TFC Loan Repayment	7/23/02	(1,500)	14,000	1,500	
TFC Loan Repayment	10/10/02	(1,000)	13,000	1,500	
TFC Loan Repayment	10/25/02	(1,500)	11,500	1,500	
TFC Loan Repayment	11/05/02	(1,500)	10,000	1,500	
TFC Loan Repayment	11/08/02	(5,000)	5,000	5,000	
TFC Loan Repayment	11/12/02	(2,000)	3,000	2,000	
TFC Loan Repayment	11/19/02	(3,000)	0	3,000	
Outstanding Balance @ 3/30/04					
			0	0	30,000
Pete Turnham Collateral	02/06/03	62,502	62,502	0	0
Pete Turnham Collateral	02/06/03	28,000	90,502	0	0
TFC Loan Repayment	08/15/03	(250)	90,252	250	0
Outstanding Balance @ 3/30/04					
			90,252	-----	0

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